



## **ATTACHMENT A**

### **Remarks**

Claims 1-2 and 4-21 stand pending in the present application. By this Amendment, Applicants have amended claims 1 and 12 in such a manner as to place this case in condition for allowance. Applicants thus submit that the present Amendment should be entered, and that upon entrance of the Amendment, the present application will be in condition for allowance based on the discussion which follows.

In the outstanding final Office Action, the rejection of the 3 March 2006 Office Action to claims 1-2 and 4-10 under 35 U.S.C. § 103(a) as being unpatentable over EP 0395300 (hereinafter "EP '300"), Rigby et al. or Aurenus, was maintained. In response to that March 3, 2006 Office Action, Applicants submitted a Declaration of Peter Swarbrick, Ph.D., which provided Dr. Swarbrick's analysis of the prior art and a comparison of the present invention to the prior art. In the final Office Action, it was argued that the previously submitted Declaration did not include sufficient evidence to overcome the 35 U.S.C. § 103 rejection. However, the Examiner also suggested that a supplemental Rule 132 Declaration, which provided data of the present invention with experimental results which demonstrate a superior result, such as greater sensitivity over the prior art based on a greater density of solid supports, would provide sufficient evidence to overcome the obviousness-type rejection.

Without addressing the Examiner's comments regarding the prior Declaration, and in accordance with the Examiner's suggestion, by this Amendment, Applicants have submitted a Supplemental Declaration of Peter Swarbrick, Ph.D. (hereinafter "Supplemental Declaration"), which provides experimental results, demonstrating the superior results achieved using the present support, having dimensions which allow for

a given area to have several orders of magnitude more of the solid support compared with the particles of Aurenus and the material or devices of Rigby et al. and EP '300 (Supplemental Declaration, paragraph 3). Specifically, the Supplemental Declaration describes the prior art of Aurenus as having particles of many orders of magnitude larger than the claimed support, which dramatically limits the number of particles that can occupy a given space, e.g., a standard test well and, therefore, severely limits the number of tests which could be performed (Supplemental Declaration, paragraph 3). As discussed in the 22 December 2005 Declaration, Aurenus teaches the smallest material of those disclosed by the three references cited, i.e. Aurenus, EP '300 and Rigby et al. However, using the present support, many orders of magnitude more of the present support can be contained within a standard test well which are physically isolated from each other and, therefore, able to be identified and read (Supplemental Declaration, paragraphs 5 and 6). Furthermore, the present small size support allows for a reduction in the amount of reagents required to perform an assay and a reduction in the volume of analyte or sample to be tested (Supplemental Declaration, paragraph 9). As a result of the claimed size, the present support provides superior and unexpected benefits over the prior art. For example, although the larger particles shown in Figure 1 of the Supplemental Declaration (which are in fact smaller than the smallest particles or material of the cited prior art) only allow for two parallel tests to be performed per sample, the present support allows for performing between 120 and 160 parallel assay tests (Supplemental Declaration, paragraph 7).

In summary, the Supplemental Declaration establishes from Figures 1-3 that particles embodying the claimed support provide greatly superior results over the prior

art material having the dimensions of the Aurenium particles, as well as the larger material of EP '300 and Rigby et al., if used to perform assay tests in accordance with those of the Supplemental Declaration. These superior results directly flow from being able to provide a much greater number of physically isolated particles per unit area, which dramatically increases the robustness of the statistics and the number of data points for each test performed, as well as allowing for a large number of parallel tests to be performed simultaneously in each well (see Supplemental Declaration, paragraph 10).

Based on the foregoing, Applicants respectfully submit that the prior art fails to make obvious the claimed support.

Finally, Applicants respectfully request that previously withdrawn claims 11-16 should be rejoined in the present application and examined in the present case in accordance with MPEP § 821.04. Claims 11-16 depend directly or indirectly from claim 1 which, based on the foregoing discussion, should be found allowable over the prior art. Therefore, method claims 11-16, which recite a method for fabricating the supports of claim 1, should be rejoined in the present application as previously withdrawn claims 11-16 require all limitations of the allowable claim 1. Moreover, Applicants respectfully submit that claims 11-16 should be found allowable over the prior art for at least the same reasons as the solid support is clear of the prior art, as recited in claim 1.

In view of the foregoing, Applicants respectfully request entrance of the present Amendment, and submit that the present Amendment places the application in condition for allowance.

**END OF REMARKS**